

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)
BOND FINANCING PROGRAMS**

STAFF REPORT

ISSUE: Staff recommends that the I-Bank Board of Directors (Board) appoint Stradling Yocca Carlson & Rauth as bond and disclosure counsel for the State School Fund Apportionment Lease Revenue Bond Program. The appointment would be for a term not to exceed five years from the date of Board approval.

HISTORY AND BACKGROUND INFORMATION: The State School Fund Apportionment Lease Revenue Bond Program (Program) began on August 23, 2004, with the enactment of AB 1554 (Chapter 263, Statutes of 2004, as amended) which provided a statutory framework for school districts experiencing financial difficulty to obtain emergency funding through lease financing made available by the I-Bank. The I-Bank is authorized to issue long-term working capital lease obligations for school districts that receive legislative approval to participate in the Program.

On September 28, 2004, the Board of Directors appointed Orrick, Herrington & Sutcliffe as bond counsel and Quateman & Zidell LLP as disclosure counsel to the Program until June 30, 2007.

On December 8 2005, the I-Bank issued \$97 million of State School Fund Apportionment Lease Revenue Bonds in three series (2005 School Bonds) to reimburse the State's General Fund for long-term emergency loans made to three school districts experiencing severe financial distress — Oakland Unified School District (Oakland), West Contra Costa Unified School District (West Contra Costa) and Vallejo City Unified School District (Vallejo City). The 2005 School Bonds issued on behalf of West Contra Costa and Vallejo City are being repaid from lease payments made by the two districts through a direct intercept of State School Fund monies designated for apportionment to the districts. The 2005 School Bonds issued for Oakland were subsequently refunded in April 30, 2008 (2008 School Bonds). The 2008 School Bonds are being repaid from lease payments made by Oakland through a direct intercept of State School Fund monies designated for apportionment to Oakland.

To the extent any school district in the future is approved by the Legislature for an emergency loan, it is anticipated that the I-Bank will issue bonds to fund the loan using the model developed for the bonds issued in 2005 and 2008.

CURRENT SITUATION: Recently enacted legislation and discussions with California Department of Education staff have alerted I-Bank staff of the need to obtain bond counsel and disclosure counsel services for anticipated school lease financings authorized under the Program.

On July 22, 2009, SB 130 (Chapter 20, Statutes of 2009) was enacted authorizing the King City Joint Union High School (King City) to enter into a lease financing with the I-Bank to fund, in part, and refund, in part, an emergency loan not to exceed \$13 million. King City, like the districts that received emergency loan financing through the 2005 School Bonds and the 2008 School Bonds, is facing fiscal and cash insolvency. Upon the issuance of bonds to finance the emergency loan to King City, a portion of the proceeds of the bonds will be used to reimburse the State's General Fund for a long-term emergency loan and the remainder of the proceeds will fund a direct emergency apportionment to King City.

To facilitate the bond issuance for King City, I-Bank has been working with California Department of Education (CDE) and Department of Finance (DOF). According to CDE staff, King City is in need of a portion of the proposed bond funds before June 30, 2010. Due to the annual bond issuance blackout period during the Governor's amended budget proposal in May, staff anticipates that any approved bonds for King City will need to be sold no later than April 30, 2010.

Due to the current fiscal crises of a number of school districts in California, CDE staff believe that additional school districts may seek legislative approval to obtain emergency apportionments through this Program. Because of the complexity of the tax issues related to long-term working capital and school lease financings as well as the structuring and disclosure similarities for bonds issued under the Program, staff believes that it would save both time and money to appoint one firm to provide both bond and disclosure counsel services. Staff also recommends appointing the firm for a period of five years considering the timeframe to receive a legislative approval and in order to maintain Program continuity.

SERVICES TO BE PROVIDED: The scope of work for each transaction under the Program will include the firm's participation from initial transaction structuring discussions to closure of the lease revenue financing.

SELECTION PROCESS: On November 9, 2009, the I-Bank sent Requests for Qualifications for Bond and Disclosure Counsel Services - State School Fund Apportionment Lease Revenue Bond Program (RFQ) to all the bond counsel firms on the State Treasurer's Office list of approved bond counsels. On November 18, 2009, I-Bank issued an Amended and Restated Request for Qualifications (Amended RFQ) modifying the minimum qualifications. Both the RFQ and the Amended RFQ were posted on the I-Bank's website. Three responses were received and were evaluated by I-Bank, CDE and DOF.

Firms submitting proposals were:

Hawkins Delafield & Wood LLP (Hawkins)
Orrick, Herrington & Sutcliffe LLP (Orrick)
Stradling Yocca Carlson & Rauth (SYCR)

EVALUATION OF FIRMS: All three firms were determined to meet the minimum qualifications requiring:

- The firm to be on the State Treasurer's Office Bond Counsel Pool List;
- The firm to have served as bond counsel for at least ten State of California financings, and at least ten K-12 public school financings and that the one or more lead attorneys have participated in at least five of the listed State of California financings, and at least five of the listed K-12 public school financings.
- Satisfactory responses to questions regarding outstanding or pertinent legal proceedings;
- At least one attorney who is a nationally recognized expert in Sections 103 and Sections 140-150 of the Internal Revenue Code relating to tax matters;
- Sufficient staffing, financial and physical resources to perform the scope of services;
- The assigned lead attorney to be based in California, an active member of the California State Bar with an expertise in California tax-exempt finance;
- Certification and signature by an individual authorized to bind the firm;
- The firm be willing to enter into an engagement letter with the terms attached to the Amended RFQ; and
- Certification of compliance with Public Contract Code 10478.

None of the responding firms are either certified small businesses or are sole proprietors. In addition, I-Bank, CDE and DOF staff performed an analysis of the Amended RFQ proposals as outlined below:

- A. Firm's Qualifications and Experience. The quality and depth of the firm's staff expertise, capability and prior experience in providing the services identified in the Amended RFQ.
- B. Competitiveness of proposed fees.
- C. Overall quality of the written response to the Amended RFQ.

With regard to A. and C. of the evaluation criteria discussed above, I-Bank, CDE and DOF staff believe that all three responding firms have sufficient expertise to warrant appointment as bond and disclosure counsel for the Program, therefore the final determination was made based on the competitiveness of proposed fees.

The RFQ requested firms to propose fees in three parts:

King City Transaction:

- 1. A flat fee, assuming publicly issued bonds, in connection with the proposed \$13 million of lease financing authorized for King City.
- 2. A flat fee, assuming a private placement of such bonds, in connection with the proposed \$13 million of lease financing authorized for King City.

Future Program Transactions:

- 3. Hourly rates for the purpose of negotiating the flat fee to be paid for future state school fund lease financing transactions in the table format provided below.

The following table summarizes the proposed fees submitted by the firms.

	Hawkins		Orrick	SYCR	
King City - Flat Fee Publicly Issued Bonds	\$105,000		\$85,000	\$65,000	
King City - Flat Fee Private Placement	\$65,000		\$45,000 - \$85,000	\$55,000	
Future Program – Hourly Rates for Negotiation	Sr Partner	\$560	Proposes same flat fee for future transactions with the following adjustments (if applicable): (a) \$35,000 (instead of \$85,000) for each school district more than one for which bonds are issued simultaneously as part of a composite issue in a single official statement, (b) \$7,000 for each investment agreement; (c) \$5,000 per month for all or part of each month greater than six months from kick-off call or first circulation of documents (whichever occurs first) for a particular transaction to closing of that transaction, (d) \$2,500 per year increase to the base fee of \$85,000 (and, if applicable, \$35,000) starting January 1, 2011.	Sr Partner	\$465
	Jr Partner	420		Jr Partner	395
	Associate	220-380		Associate	250
	Paralegal	110		Paralegal	135

In consideration of each scenario as well as the five year term of this appointment, staff of all three reviewing entities believe the fees proposed by Stradling Yocca Carlson & Rauth (SYCR) are and will continue to be the most competitive. Payment for services rendered under this appointment shall be solely from bond proceeds, and payment will be conditioned upon the issuance of bonds.

Prior to initiation of a Program bond financing, the I-Bank will enter into a Letter of Engagement with the SYCR detailing the amount of the bond counsel fee, the scope of responsibility as well as the fact that compensation shall be made from bond proceeds upon successful issuance and sale of bonds.

At such time as an Letter of Engagement is entered into, the Executive Director will report such action to the Board at the next succeeding meeting of the Board.

RECOMMENDATION: Staff recommends approval of Resolution 09-47 appointing Stradling Yocca Carlson & Rauth as bond and disclosure counsel for the State School Fund Apportionment Lease Revenue Bond Program. The appointment would be for a term not to exceed five years from the date of I-Bank Board approval.